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February 9, 2016

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
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Los Angeles, California 90012

#22 OF FEBRUARY 9, 2016

Agenda No. 5
10/27/15

PATRICK OWAGA
ACTING EXECUTIVE OFFICER

**Re: PROJECT NUMBER R2014-03644-(1)
CONDITIONAL USE PERMIT NUMBER 2014-00175-(1)
FIRST SUPERVISORIAL DISTRICT/THREE-VOTE MATTER**

Dear Supervisors:

Your Board previously held a duly-noticed public hearing on the above-referenced project to authorize the sale of beer and wine for on-site consumption at a restaurant being developed at 5862 Whittier Boulevard in the unincorporated community of East Los Angeles. At the completion of the hearing, you indicated your intent to approve the project with elimination of a condition requiring purchase of an existing alcohol license. Enclosed are findings and conditions for your consideration.

Very truly yours,

MARY C. WICKHAM
County Counsel

By

ELAINE M. LEMKE
Acting Assistant County Counsel
Property Division

APPROVED AND RELEASED:

THOMAS J. FAUGHNAN
Senior Assistant County Counsel

EML:ph
Enclosures

c: Sachi A. Hamai, Chief Executive Officer
Patrick Owaga, Acting Executive Officer, Board of Supervisors

REVISED FINDINGS FOR PROJECT NO. R2014-03644-(1)

(See change on Page 4, Finding No. 22. The phrase "off-site" was changed to "on-site")

**FINDINGS OF THE REGIONAL PLANNING COMMISSION
AND ORDER
PROJECT NO. R2014-03644-(1)
CONDITIONAL USE PERMIT NO. 2014-00175-(1)**

1. The Los Angeles County ("County") Board of Supervisors ("Board") conducted a duly-noticed public hearing in matter of Project No. 2014-03644-(1), consisting of Conditional Use Permit No. 2014-00175-(1) ("CUP") (collectively, the "Project"), on October 27, 2015. The County Regional Planning Commission ("Commission") conducted a duly-noticed public hearing regarding the Project on May 13, 2015.
2. The applicant, Michael De La Rosa ("Applicant"), requests the CUP to authorize the sale of beer and wine for on-site consumption (Type 41 alcohol license) at a new 2,000-square-foot restaurant on a property located at 5862 Whittier Boulevard in the unincorporated community of East Los Angeles ("Project Site") in the C-3 (Unlimited Commercial) zone pursuant to Los Angeles County Code ("County Code") Section 22.28.210.
3. The Project Site is 0.05 acres in size and consists of one legal lot. The Project Site is rectangular in shape with flat topography and is developed with a commercial retail building.
4. The Project Site is located in the Eastside Unit No. 1 Zoned District, is currently zoned C-3, and is located in an area covered by the East Los Angeles Community Standards District ("East Los Angeles CSD").
5. The Project Site is located within the CC – Community Commercial land use category of the East Los Angeles Community Plan Land Use Policy Map.
6. Surrounding zoning within a 500-foot radius includes:

North: C-3 and R-3 (Limited Multiple Residence);
South: R-3;
East: C-3 and R-3; and
West: C-3 and R-3.
7. Surrounding land uses within a 500-foot radius include:

North: Retail/commercial and multi-family residences;
South: Single-family residences and multi-family residences;
East: Retail/commercial, single-family residences, and multi-family residences; and
West: Retail/commercial, medical offices, church with a church school, single-family residences, and multi-family residences.
8. The Project Site was zoned C-3 in 1927. Building permits show that the existing structure on the Project Site was built in 1947. On January 16, 2014, Plot Plan

No. 2013-01245 approved the conversion and remodeling of the building into a restaurant.

9. The site plan for the Project depicts the new restaurant in a 2,000-square-foot commercial building along Whittier Boulevard. A concrete slab area located at the rear of the building is used for trash storage.
10. The Project Site is accessible via Whittier Boulevard to the east and west. Primary access to the Project Site will be via an entrance/exit on Whittier Boulevard. Secondary access to the Project Site will be via an entrance/exit off of an alley behind the building. Secondary access is for employees only. The Project Site contains no parking.
11. The County Sheriff's Department, East Los Angeles Station, reviewed the CUP request and neither advocated support nor opposition to the Project. A five-year crime history query could not be made for the Project Site because the restaurant is a new business. Enforceable conditions that the Sheriff's station recommended include the installation of security cameras with recordings retained for 30 days, and that any graffiti be removed from the premises immediately.
12. Statistical data from the California Department of Alcoholic Beverage Control ("ABC") report that the Project Site is located in a high crime reporting district. The Project Site lies within Census Tract No. 5319.01. There are currently three existing ABC licenses in this census tract and six licenses are allowed. Therefore, there is not an undue concentration of alcoholic beverages within Census Tract No. 5319.01.
13. Prior to the Commission's public hearing on the Project, staff from the Department of Regional Planning ("Regional Planning") determined that the Project qualified for a Class 1, Existing Facilities, categorical exemption under the California Environmental Quality Act (Public Resources Code section 21000, et seq.) ("CEQA"), the State CEQA Guidelines, and the Environmental Document Reporting Procedures and Guidelines for the County, because the Project involves the selling of beer and wine for on-site consumption at a restaurant and does not require any new improvements or construction to the existing building.
14. Pursuant to the provisions of Sections 22.60.174 and 22.60.175 of Title 22 of the County Code (the "Zoning Code"), the community was appropriately notified by mail, newspaper, and property posting of the Project's public hearings at the Commission and the Board. Additionally, the Project was noticed and case materials were available on Regional Planning's website and at libraries located in the vicinity of the East Los Angeles community.
15. At the Commission's May 13, 2015 public hearing, Regional Planning Staff briefly presented the Project and recommended its approval but with a condition that required the Applicant to purchase an existing ABC license so that there would

be no net increase in such licenses in the area. The Applicant testified in favor of the Project, but requested that the condition requiring purchase of an existing ABC alcohol license be removed from the permit because of the difficulty of finding an existing alcohol license within the East Los Angeles community to purchase or retire. Commissioners responded by noting that there is a concern with the large number of existing alcohol licenses in East Los Angeles and that the proposed condition should remain in the permit to address those concerns. There being no further testimony, the Commission closed the public hearing and approved the CUP and included the ABC license purchase conditions.

16. The Applicant timely appealed the Commission's decision to the Board on the grounds that the alcohol-license purchase condition was unreasonable and unjust and that, despite the Applicant's best efforts, it had been "impossible to acquire "such a license."
17. At the Board's October 27, 2015 hearing, Regional Planning staff briefly outlined the Project and recommended that the appeal be denied so that, while the CUP would be granted, it would include the condition requiring purchase of an existing ABC license. Regional Planning staff also reported that they had received 380 letters supporting the Applicant in favor of removing the condition and one letter that supported maintaining the ABC license-purchase condition.
18. Four people testified at the Board hearing, all in favor of the Applicant's position. The Applicant's attorney testified that the ABC license-purchase condition imposed an unreasonable burden on small businesses, pointing out that the latest estimate his client received for purchase of such a license was \$25,000 which represented a quarter of his client's intended budget to remodel and develop the restaurant. He stated that the requirement "puts an untenable burden on the small business persons who are endeavoring to" add benefits and jobs to an underserved community. Another person pointed out that the building in which the restaurant would be located had been vacant for 15 years and voiced support for a new business in that location. A representative of the East Los Angeles Chamber of Commerce testified that his organization was happy to have someone willing to invest in East Los Angeles which will add new jobs to the area. He testified that he felt allowing the sale of beer and wine at the restaurant would allow it to compete with surrounding businesses.
19. After completion of public testimony, the Board closed the public hearing. Supervisor Hilda Solis indicated her support of the Applicant's appeal, pointing out that the area in which the Project is located had undergone a major transformation in the last few years, leading to growth and that having another restaurant alternative would benefit the area and praised the Applicant's proposed investment. The Board then indicated its intent to approve the Project as moved by the Supervisor and instructed County Counsel to prepare the appropriate findings and conditions.

20. The Board finds that the project site is located within the CC – Community Commercial land use category of the East Los Angeles Community Plan. This designation is intended for areas with mostly small businesses that are oriented to serving the needs of surrounding neighborhoods. The selling of beer and wine for on-site consumption at a restaurant is intended to enhance the dining services provided to the local neighborhood and is therefore consistent with the permitted uses of the underlying land use category.
21. The Board finds that establishments in the C-3 Zone are subject to development standards as prescribed under County Code Section 22.28.220. These development standards include provisions for landscaping, parking, and outside display. Additionally, establishments in the East Los Angeles CSD are subject to development standards as prescribed under County Code Section 22.44.118. Building permits show that the building was built in 1947 and conformed to the development standards at the time it was built and prior to current adopted development standards for the C-3 Zone and the East Los Angeles CSD. Therefore, the Project is nonconforming due to current development standards on landscaping and parking. The Project is not required to comply with these current standards due to its nonconforming status.
22. The Board finds that the sale of alcoholic beverages at a new restaurant on the subject property is compatible with the surrounding neighborhood and provides a needed service to the community. Alcoholic beverage sales is a permitted use in the C-3 Zone once a CUP is obtained. Currently, there is one other establishment within a 500-foot radius of the subject property that sells alcohol (Mi Tierra Restaurant, Type 41). Although this constitutes an undue concentration under the County Code, the Board finds that the sale of beer and wine for ~~off~~on-site consumption would serve as a public convenience and necessity to the surrounding community by providing products and services that are consistent with other restaurants in the area and would allow the restaurant to compete with such nearby restaurants. With the Project conditions, the Project will remain consistent and compatible with the surrounding community.
23. The Board finds that the sale of alcoholic beverages at the restaurant would necessitate an increase in staff that would be properly trained in the laws and regulations of serving such beverages. Security will be provided at the restaurant as needed to ensure safety of property and individuals.
24. The Board finds that the existing building was constructed in 1947 and conformed to the development standards in place at the time it was built. The building is undergoing tenant improvements to ensure the safety of the building and to enhance the appearance of the building. These new tenant improvements ensure that the structure's exterior appearance is consistent with the appearance of other commercial structures in the neighborhood.
25. The Board finds that the existing site is easily accessible by fully improved roads and is serviced by existing public utilities.

26. The Board finds that there are two sensitive uses within 600 feet of the Project Site (a church and its associated church school). The Applicant proposed hiring extra staff and security during the times when church services are being held to prevent any negative effects of alcohol service.
27. The Board finds that the nearby residences to the south of the Project Site are sufficiently buffered by an alley.
28. The Board finds that the sale of alcoholic beverages will not adversely affect the economic welfare of the community and may attract new customers to surrounding local businesses.
29. The Board finds that to ensure continued compatibility between the Project and the surrounding land uses, it is necessary to limit the Conditional Use Permit to 15 years.
30. The location of the documents and other materials constituting the record of proceedings upon which the Board's decision is based in this matter is at the Los Angeles County Department of Regional Planning, 13th Floor, Hall of Records, 320 West Temple Street, Los Angeles, California 90012. The custodian of such documents and materials shall be the Section Head of the Zoning Permits East Section, Department of Regional Planning.

BASED ON THE FOREGOING, THE BOARD CONCLUDES AND FINDS THAT:

- A. The proposed use with the attached conditions will be consistent with the adopted General Plan.
- B. The proposed use at the Project Site will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, will not be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the Project Site, and will not jeopardize, endanger, or otherwise constitute a menace to the public health, safety, or general welfare.
- C. The Project Site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping, and other development features prescribed in the Zoning Code, or as is otherwise required in order to integrate said use with the uses in the surrounding area.
- D. The Project Site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate, and by other public or private service facilities as are required.
- E. The requested use at the Project Site will not adversely affect the use of a place used exclusively for religious worship, school, park, playground, or any similar use within a 600-foot radius of the Project Site.

- F. The requested use at the Project Site is sufficiently buffered in relation to any residential area within the immediate vicinity so as not to adversely affect said area.
- G. The requested use at the Project Site will not result in an undue concentration of similar premises.
- H. The requested use at the Project Site will not adversely affect the economic welfare of the surrounding community.
- I. The exterior appearance of the structure will be consistent with the exterior appearance of commercial structures already constructed or under construction within the immediate neighborhood and will not cause blight, deterioration, or substantially diminish or impair property values within said neighborhood.

THEREFORE, THE BOARD OF SUPERVISORS:

- 1. Finds that the Project is exempt from the California Environmental Quality Act pursuant to section 15301 of the State CEQA Guidelines (Class 1, Existing Facilities categorical exemption); and
- 2. Approves Conditional Use Permit No. 2014-00175-(1), subject to the attached conditions.

**CONDITIONS OF APPROVAL
PROJECT NO. R2014-03644-(1)
CONDITIONAL USE PERMIT NO. 2014-00175-(1)**

1. This grant for Conditional Use Permit No. 2014-00175-(1) authorizes the sale of beer and wine for on-site consumption (Type 41 alcohol license) at a new restaurant.
2. Unless otherwise apparent from the context, the term "permittee" shall include the applicant, owner of the property, and any other person, corporation, or other entity making use of this grant.
3. This grant shall not be effective for any purpose until the permittee, and the owner of the subject property if other than the permittee, have filed at the office of the Los Angeles County ("County") Department of Regional Planning ("Regional Planning") their affidavit stating that they are aware of and agree to accept all of the conditions of this grant, and that the conditions of the grant have been recorded as required by Condition No. 8, and until all required monies have been paid pursuant to Condition No. 11. Notwithstanding the foregoing, this Condition No. 3 and Condition Nos. 5, 6, and 10 shall be effective immediately upon the date of final approval of this grant by the County.
4. Unless otherwise apparent from the context, the term "date of final approval" shall mean the date the County's action becomes effective pursuant to Section 22.60.260 of the Los Angeles County Code ("County Code").
5. The permittee shall defend, indemnify, and hold harmless the County, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void, or annul this permit approval, which action is brought within the applicable time period of Government Code section 65009 or any other applicable limitations period. The County shall promptly notify the permittee of any claim, action, or proceeding and the County shall reasonably cooperate in the defense. If the County fails to promptly notify the permittee of any claim, action, or proceeding, or if the County fails to cooperate reasonably in the defense, the permittee shall not thereafter be responsible to defend, indemnify, or hold harmless the County.
6. In the event that any claim, action, or proceeding as described above is filed against the County, the permittee shall within 10 days of the filing make an initial deposit with Regional Planning in the amount of up to \$5,000, from which actual costs and expenses shall be billed and deducted for the purpose of defraying the costs or expenses involved in Regional Planning's cooperation in the defense, including but not limited to, depositions, testimony, and other assistance provided to permittee or permittee's counsel.

If during the litigation process, actual costs or expenses incurred reach 80 percent of the amount on deposit, the permittee shall deposit additional funds

sufficient to bring the balance up to the amount of \$5,000. There is no limit to the number of supplemental deposits that may be required prior to completion of the litigation.

At the sole discretion of the permittee, the amount of an initial or any supplemental deposit may exceed the minimum amounts defined herein. Additionally, the cost for collection and duplication of records and other related documents shall be paid by the permittee according to County Code Section 2.170.010.

7. If any material provision of this grant is held or declared to be invalid by a court of competent jurisdiction, the permit shall be void and the privileges granted hereunder shall lapse.
8. Prior to the use of this grant, the permittee, or the owner of the subject property if other than the permittee, shall record the terms and conditions of the grant in the office of the County Registrar-Recorder/County Clerk ("Recorder"). In addition, upon any transfer or lease of the property during the term of this grant, the permittee, or the owner of the subject property if other than the permittee, shall promptly provide a copy of the grant and its conditions to the transferee or lessee of the subject property.
9. This grant shall terminate on January 4, 2031. Entitlement to use of the property thereafter shall be subject to the regulations then in effect. If the permittee intends to continue operations after such date, whether or not the permittee proposes any modifications to the use at that time, the permittee shall file a new conditional use permit application with Regional Planning, or shall otherwise comply with the applicable requirements at that time. Such application shall be filed at least six months prior to the expiration date of this grant and shall be accompanied by the required fee. In the event that the permittee seeks to discontinue or otherwise change the use, notice is hereby given that the use of such property may require additional or different permits and would be subject to the then-applicable regulations.
10. This grant shall expire unless used within two years from the date of final approval of the grant. A single one-year time extension may be requested in writing and with the payment of the applicable fee prior to such expiration date.
11. The subject property shall be maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance, or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions. Inspections shall be made to ensure compliance with the conditions of this grant as well as to ensure that any development undertaken on the subject property is in accordance with the approved site plan on file. The permittee shall deposit with the County the sum of \$1,600. The deposit shall be placed in a performance fund, which shall be used exclusively to

compensate Regional Planning for all expenses incurred while inspecting the premises to determine the permittee's compliance with the conditions of approval. The fund provides for eight biennial (one every other year) inspections. Inspections shall be unannounced.

If additional inspections are required to ensure compliance with the conditions of this grant, or if any inspection discloses that the subject property is being used in violation of any one of the conditions of this grant, the permittee shall be financially responsible and shall reimburse Regional Planning for all additional enforcement efforts necessary to bring the subject property into compliance. The amount charged for additional inspections shall be \$200 per inspection, or the current recovery cost at the time any additional inspections are required, whichever is greater.

12. Notice is hereby given that any person violating a provision of this grant is guilty of a misdemeanor. Notice is further given that the Regional Planning Commission ("Commission") or a Hearing Officer may, after conducting a public hearing, revoke or modify this grant, if the Commission or Hearing Officer finds that these conditions have been violated or that this grant has been exercised so as to be detrimental to the public's health or safety or so as to be a nuisance, or as otherwise authorized pursuant to Chapter 22.56, Part 13 of Title 22 of the County Code.
13. All development pursuant to this grant must be kept in full compliance with the County Fire Code to the satisfaction of the County Fire Department.
14. All development pursuant to this grant shall conform with the requirements of the County Department of Public Works to the satisfaction of said department.
15. All development pursuant to this grant shall comply with the requirements of Title 22 of the County Code and of the specific zoning of the subject property, unless specifically modified by this grant, as set forth in these conditions, including the approved Exhibit "A," or a revised Exhibit "A" approved by the Director of Regional Planning ("Director"). In the event that subsequent revisions to the approved Exhibit "A" are submitted, the permittee shall submit three copies of the proposed plans to the Director for review and approval. All revised plans must substantially conform to the originally approved Exhibit "A". All revised plans must be accompanied by the written authorization of the property owner(s) and applicable fee for such revision.
16. The permittee shall maintain the subject property in a neat and orderly fashion. The permittee shall maintain free of litter all areas of the premises over which the permittee has control.
17. All structures, walls, and fences open to public view shall remain free of graffiti or other extraneous markings, drawings, or signage that was not approved by Regional Planning. These shall include any of the above that do not directly

relate to the business being operated on the premises or that do not provide pertinent information about said premises. The only exceptions shall be seasonal decorations or signage provided under the auspices of a civic or non-profit organization.

In the event of graffiti or other extraneous markings occurring, the permittee shall remove or cover said markings, drawings, or signage within 24 hours of such occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of the adjacent surfaces.

PERMIT SPECIFIC CONDITIONS - CONDITIONAL USE PERMIT (SALE OF ALCOHOLIC BEVERAGES)

18. The conditions of this grant shall be retained on the premises at all times and shall be made available upon request of any County Sheriff, Zoning Inspector, or Department of Alcoholic Beverage Control agent. The manager and all employees of the facility shall be knowledgeable of the conditions herein.
19. Loitering shall be prohibited on the subject property, including loitering by employees of the subject property. Signage in compliance with Section 22.52 of Part 10 of Title 22 of the County Code shall be placed on the premises indicating said prohibition. Employees shall be instructed to enforce these regulations and to call local law enforcement if necessary.
20. The permittee and all managers and designated employees of the establishment, who directly serve or are in the practice of selling alcoholic beverages shall participate in the LEAD (Licensee Education on Alcohol and Drugs) Program provided by the State of California Department of Alcoholic Beverage Control. All new designated employees shall be required to attend. The licensee shall display a certificate or plaque in a publicly accessible area of the establishment such as the lobby, indicating they have participated in this program. Proof of completion of the facilities' training program by employees, the licensee and all managers shall be available upon request.
21. The permittee shall not advertise the sale of alcoholic beverages on the exterior of any structure on the subject property including windows, walls, fences, or similar structures.
22. All regulations of the State of California prohibiting the sale of alcoholic beverages to minors shall be strictly enforced.
23. The permittee shall post or otherwise provide telephone numbers of local law enforcement agencies and taxicab companies at or near the cashier, or similar public service area. Such telephone numbers shall be visible by and available to the general public.

24. This grant authorizes the sale of alcoholic beverages from 10:00 a.m. to 9:00 p.m., Monday to Thursday, 10:00 a.m. to 1:30 a.m., Friday and Saturday, and 10:00 a.m. to 10:00 p.m. on Sunday.
25. There shall be no consumption of alcoholic beverages outside the designated areas of the subject facility. The permittee shall instruct all designated employees, who directly serve or are in the practice of selling alcoholic beverages, regarding this restriction. Employees shall be instructed to enforce such restrictions and to call local law enforcement as necessary.
26. The permittee shall develop and implement a Designated Driver program (i.e., free soft drinks or coffee to a designated driver of a group). The permittee shall submit the program to the Director of Planning for approval prior to the approval of the Exhibit "A." A printed two-sided card explaining this program shall be placed on all tables in the restaurant or an explanation regarding the program shall be printed on the menu.
27. All servers of alcoholic beverages must be at least 18 years of age.
28. There shall be no music or other noise audible beyond the restaurant premises.
29. No live entertainment, dancing, or dance floor is authorized in or outside the premises.
30. Alcoholic beverages shall be sold to customers only when food is ordered and consumed within the subject restaurant only.
31. The sale and serving of alcoholic beverages for consumption outside the restaurant is prohibited.
32. The business shall employ not less than one full-time cook that is engaged in the preparation of meals for patrons during the permissible hours of operation.
33. Not less than 51 percent of the income from the business enterprise shall be derived from the sale of food and non-alcoholic beverages. The business owner shall at all times maintain records which reflect separately the gross sale of food and the gross sale of alcoholic beverages. Said records shall be made available to the Los Angeles County Department of Regional Planning, the Department of Alcoholic Beverage Control, or the Los Angeles County Sheriff's Department on demand.
34. The permittee may hold "happy hour" drink specials, specials, or similar promotions from 4:00 p.m. to 7:00 p.m., Monday to Friday, only in conjunction with food.
35. Food service shall be continuously provided during operating hours.

36. All exterior lighting shall be hooded and directed away from neighboring residences to prevent direct illumination and glare, and shall be turned off within 30 minutes after conclusion of activities, with the exception of sensor-activated security lights and/or low level lighting along all pedestrian walkways leading to and from the parking lot.
37. Security cameras shall be installed on the premises of the subject establishment. Security camera footage shall be recorded at all times and have the capability for 30-day retention.
38. Per Public Health requirements pertaining to establishments that sell alcoholic beverages for on-site consumption, the restaurant shall maintain separate restrooms for women and men. The men's restroom shall provide at least one urinal.